SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 23 1965
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1964

No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

Appellant

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

Appellee

APPELLANT'S BRIEF

Appeal from the Supreme Court of the State of Iowa

GEORGE S. PORIKOS
221 North LaSalle Street
Chicago, Illinois
Of Counsel

ROBERT R. EIDSMOE
611-621 Security Building
Sioux City, Iowa 51101
Counsel for Appellant.

Cockle Printing Company—Law Briefs—Omaha, Nebr.

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Questions Presented	3
Argument:	
I. Treaties entered into by the United States with foreign governments are the supreme law of the land, and insofar as state statutes are in conflict, they are suspended or invalidated.	7
1. Treaties invalidate, suspend or nullify state statutes in conflict therewith.	7
2. Treaties are to be liberally construed to effectuate their purpose.	7
3. The interpretation placed upon treaties by the governmental agencies charged with their enforcement and administration are given great weight by the courts.	8
II. The Treaty between the United States and Greece clearly nullifies the requirement of Iowa law that Appellant must prove the existence of reciprocal rights of succession before he may acquire property rights in Iowa.	9
1. The treaty clearly gives Appellant the right to acquire Iowa property, to dispose of it within five years, and to freely withdraw the proceeds.	9
2. The interpretation placed upon the treaty by the Iowa Court that the treaty itself requires proof of reciprocal rights of succession and that the requirements of Iowa law are not nullified by the treaty are clearly erroneous.	10

INDEX—Continued

Page

3. The interpretation placed on the treaty by the United States Department of State is in accord with Appellant's and the minority of the Iowa Supreme Court and should be given great weight by this Court. 20

Conclusion 21

APPENDIX

Appendix A:

Section 567.1, Code of Iowa, 1958 23

Section 567.8, Code of Iowa, 1958 23

Appendix B:

Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece, August 3, 1951 (1954), 2 U. S. T. & O. I. A. 1829, T. I. A. S. No. 3057 24

CITATIONS

Cases:

Ahrens v. Ahrens, 144 Iowa 486, 123 N. W. 164 (1909) 13, 18

Clark v. Allen, 331 U. S. 503 (1947) 7, 12, 13

Doehrel v. Hillmer, 102 Iowa 169, 71 N. W. 204 (1897) 17

Factor v. Laubenheimer, 290 U. S. 276 (1933) 7

Kolovrat v. Oregon, 366 U. S. 187 (1961) 8, 13, 21

Nielsen v. Johnson, 279 U. S. 47 (1929) 8

INDEX—Continued

Page

Treaties:

Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece, August 3, 1951 (1954), 2 U. S. T. & O. I. A. 1829, T. I. A. S. No. 3057 ..... 2, 3, 5, 6, 9, 10, 12-17, 19, 24

Statutes:

United States Code

28 U. S. C. Section 1257 2

Code of Iowa, 1958

Section 567.1 ..... 2, 3, 8, 22, 23

Section 567.8 ..... 2-6, 8-10, 12, 15, 16, 22, 23

Legal Authorities:

Boyd, Willard L., The Invalidity of State Statutes Governing the Share of Nonresident Aliens in Decedent Estates, 51 Georgetown Law Review 470, 473 11

Boyd, Willard L., Treaties Governing the Succession to Real Property by Aliens, 51 Michigan Law Review 1001, 1016 11

Property Rights of Aliens under Iowa and Federal Laws, 47 Iowa Law Review 104, 117 11

Supreme Court of the United States

OCTOBER TERM, 1964

No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

Appellant

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

Appellee

APPELLANT'S BRIEF

Appeal from the Supreme Court of the State of Iowa

OPINION BELOW

The Opinion and Judgment of the Supreme Court of Iowa affirming the decision of the Trial Court dismissing Appellant's Petition appears as *Corbett v. Stergios,* ..... Iowa ....., 126 N. W. 2d 342 (1964). (R. 42-55).

JURISDICTION

The Opinion and Judgment of the Court below, (R. 42-55) was entered on February 11, 1964. Notice of

Appeal to the Supreme Court of the United States was filed on April 23, 1964 (R. 56-57). On January 18, 1965, the Supreme Court of the United States entered an Order noting probable jurisdiction and placing this case on the summary calendar (R. 58).

The jurisdiction of this Court rests on the Act of June 25, 1948, c. 646, 62 Stat. 929, 28 U. S. C., Sec. 1257 (2).

This is an appeal from a final judgment of the highest Court of the State of Iowa, where is drawn in question the validity of Section 567.1 and Section 567.8, Code of Iowa, 1958, on the ground that they are repugnant to the Treaty of Friendship, Commerce and Navigation between the United States and Greece. The Opinion and Order of the Iowa Supreme Court dated February 11, 1964, found the Iowa statute to be valid (R. 42-55).

TREATY AND STATUTES INVOLVED

This action involves the validity of Section 567.1, Code of Iowa, 1958, and Section 567.8, Code of Iowa, 1958. The full text of the two sections of the Iowa Code is set out in Appendix A, *infra*. The two sections of the Iowa Code are deemed repugnant to the Treaty of Friendship, Commerce and Navigation between the United States and the Kingdom of Greece, Aug. 3, 1951 (1954), 2 U. S. T & O. I. A. 1829, T. I. A. S. No. 3057. The text of the pertinent Articles of the Treaty is set out in Appendix B, *infra*.

QUESTIONS PRESENTED

I. Whether the Treaty of Friendship, Commerce and Navigation between the United States and the Kingdom of Greece nullifies the requirement of Sections 567.1 and 567.8, Code of Iowa, 1958, that Appellant nonresident Greek alien must prove the existence of reciprocal rights of succession before he may acquire an interest in Iowa real estate and personal property by intestate succession from his adopting father?

STATEMENT OF THE CASE

Appellee married Nicholas Stergios in March, 1946. No children were born of the marriage (R. 32). On October 20, 1954, Nick Stergios executed a Will naming as his sole beneficiaries, his wife, the Appellee, and a niece known as Eleftheria Stergios. No mention was made of testator's intention to provide for or not to provide for children or afterborn children (R. 44).

During the year 1956, the Appellee and her husband discussed adopting a child (R. 32-33). Proceedings were instituted and completed in the Court of the First Instance of Heracleon, Island of Crete, Kingdom of Greece, whereby Appellant's ward, Constantine Neonakis, a minor child residing in and a citizen of Greece was adopted by Nick Stergios (R. 33). The Trial Court found that the adoption took place in accordance with Greek law and with the consent of Appellee (R. 36). The adoption took effect on February 22, 1958, the date of the decree of the Greek Court (R. 33).

Shortly after the adoption Nick Stergios became ill and died on August 20, 1958. The minor child, who was the son of a niece of Nick Stergios, was never brought to this country (R. 32-33).

The Will of Nick Stergios, dated October 20, 1954, was probated as Number 22041 Probate in Woodbury County, Iowa (R. 8). The minor child was not listed in the probate proceedings as a beneficiary and notice was not given to the minor or any legal representative of any probate proceedings. The estate was closed on March 26, 1959. No distribution was made to Appellant's ward (R. 34).

On February 15, 1961, Stanley M. Corbett, an attorney, was appointed Guardian of Constantine Neonákis, a minor. Shortly thereafter suit was commenced by the Guardian, Appellant herein, to reopen the estate, set aside the Final Report, and to recover for the minor ward two-thirds of the Estate of Nick Stergios (R. 44).

Trial was held in equity without jury on July 6, 1962. It was contended in the pleadings and at the trial by Appellant that Apellant's ward was entitled to two-thirds of the estate by virtue of Section 633.13, Code of Iowa, 1958. That section provides in substance that when a testator shall have a child born after the making of a Will and shall die leaving such child neither provided for or mentioned in the Will, such child shall inherit from the deceased parent as though no Will had been made. A child's intestate share of his parent's estate in Iowa is two-thirds of the estate (R. 33-34).

At the trial, as part of Appellant's case, Appellant contended that Section 567.8, Code of Iowa, 1958, was

nullified by virtue of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece. Appellant, as part of Appellant's case, asked the Court to take judicial notice of the Treaty and offered into evidence a copy of the Greek Treaty as Plaintiff-Appellant's Exhibit "5". This Treaty was offered and received in evidence for the purpose of showing that Section 567.8, Code of Iowa, 1958, was repugnant thereto and to establish the nullification of the Iowa Statute (R. 21-22).

Section 567.8, Code of Iowa, 1958, set out in full in Appendix A, provides in essence that nonresident aliens may not take title to real property in Iowa unless the nonresident alien can prove the existence of reciprocal rights of succession given to United States citizens to inherit real estate in the foreign country. Here, therefore, under the provisions of Section 567.8, Appellant must prove that Greece gives United States citizens the right to inherit real estate in Greece before Appellant's ward could inherit Iowa real estate.

Appellant contended at the time of trial that Section 567.8, Code of Iowa, 1958, was nullified by the Greek Treaty, and particularly Article IX thereof. The pertinent portions of the Treaty are set out in Appendix B. Appellant contended that Article IX of the Treaty grants to nationals of either party to the Treaty, national treatment with respect to acquiring property in the territory of the other. Appellant contended that while Section 1(a) of Article IX provides that the acquisition of property by Greeks within the United States shall be dependent

upon the law of the state within which the property is located. Section 2 of Article IX provides that where a national of either country is prevented from receiving national treatment in the acquisition of property by succession because of his alienage, the foreign national shall be given five years to dispose of the property.

On October 18, 1962, the Trial Court entered its Judgment and Decree finding that a valid adoption had been effected by which Appellant's ward became the adopted child of Nick Stergios, and that the status should be recognized by the State of Iowa (R. 36). The Court did find, however, that the Treaty did not nullify Section 567.8, Code of Iowa, 1958, and that Appellant must prove the existence of reciprocal rights to succession as required by that statute. Appellant had elected to stand on the rights granted by the Treaty and did not prove the existence of the reciprocal rights. The Trial Court thereupon dismissed Appellant's Petition (R. 36-38).

Appellant thereupon appealed the ruling to the Iowa Supreme Court. By a five to four decision the Iowa Supreme Court affirmed the Trial Court. The only issue discussed or determined was the assignment of error presented by Appellant as to whether the Treaty nullified the requirements of Section 567.8, Code of Iowa, 1958. The majority found that the Treaty did not nullify the Iowa statute and Appellant still had the burden of proving the existence of reciprocal rights of succession (R. 42-55).

ARGUMENT

I.

Treaties entered into by the United States with foreign governments are the supreme law of the land, and insofar as state statutes are in conflict, they are suspended or invalidated.

Article VI of the Constitution of the United States clearly provides that treaties made by the United States shall be the supreme law of the land and insofar as state statutes and common law or even constitutions are in conflict, they are suspended or invalidated.

The treaty power has been used frequently as a basis for invalidating state laws governing rights of succession to property within a state. In *Clark v. Allen*, 331 U. S. 503, decided in 1947, a California statute governing rights to succession to property in California was held to be invalidated by a treaty between the United States and Germany. This Court there noted at page 517:

> "Rights of succession to property are determined by local law. * * * Those rights may be affected by overruling federal policy, as where a treaty makes different or conflicting arrangements. * * * Then the state policy must give away."

It has long been held that treaties should be liberally construed. This Court stated in *Factor v. Laubenheimer*, 290 U. S. 276, decided in 1933 at page 293 thereof:

> "In choosing between conflicting interpretations of a treaty obligation, a narrow and restricted construction is to be avoided as not consonant with the principles deemed controlling in the interpretation of international agreements. Considerations which

> should govern the diplomatic relations between nations, and the good faith of treaties as well, require that their obligations should be liberally construed so as to effect the apparent intention of the parties to secure equality and reciprocity between them. For that reason, if a treaty fairly admits of two constructions, one restricting the right which may be claimed under it, and the other enlarging it, the more liberal is to be preferred."

Furthermore, as set out by this Court in *Nielsen v. Johnson*, 279 U. S. 47, decided in 1929, since the treaty making power is independent of and superior to the legislative power of the states, the meaning of treaty provisions should not be narrowly construed by any necessity of avoiding conflict with state legislation.

Finally, in considering the construction and interpretation to be placed upon treaties, it has been stated frequently that the interpretation placed upon treaties by the United States State Department shall be given great weight. In *Kolovrat v. Oregon*, 366 U. S. 187, decided in 1961, at page 194, this Court stated:

> "While courts interpret treaties for themselves, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is given great weight."

As applied to the case at bar, then, the Treaty with Greece is supreme over Iowa statutes. If Section 567.1 and Section 567.8, Code of Iowa, 1958, conflicts with the Treaty with Greece, it is to that extent nullified. In determining whether the treaty and statute conflict, the provisions of the treaty must be liberally construed and the interpretation of it by the State Department should be given great weight.

II.

The Treaty between the United States and Greece clearly nullifies the requirement of Iowa law that Appellant must prove the existence of reciprocal rights of succession before he may acquire property rights in Iowa.

Disregarding for the moment the effect of the Treaty, there can be no question but that under Section 567.8, Code of Iowa, 1958, Appellant's ward may not take title to property in Iowa by succession unless Appellant proves the existence of a reciprocal right upon the part of United States citizens to take property in Greece by succession. Furthermore, the burden is on the nonresident alien to establish the fact of existence of reciprocal rights of succession. The full text of the statute is set out in Appendix A, *infra*.

The Treaty, however, is in clear conflict with the Iowa statute. The full text of the pertinent portions of the Treaty is set out in Appendix B. Section 1 of Article IX of the Treaty provides that nationals of both the United States and Greece shall be given "national treatment" to "acquire by purchase or otherwise" and with respect to "owning, leasing, occupying and using" property within the territory. Sub-section (a) and (b) of Section 1 impose restrictions on the right granted in Section 1. Subsection (a) says that the right of Greeks to acquire rights in property in the United States "shall be dependent upon the applicable laws of the States • • • within which such property is located". Sub-section (b) says that the right of United States citizens to acquire property in Greece may be restricted by Greece in certain frontier and coastal areas.

Thus, Section 1 says, in effect, that nationals of both the United States and Greece can acquire and own property in the other nation subject to certain restrictions. In the United States, the right of Greeks to acquire property shall be subject to state laws. Iowa and many other states have placed restrictions on the right of non-resident aliens to take property. Iowa Code Section 567.8 says, in effect, the Greek must be required to prove the existence of a reciprocal right to take on the part of U. S. nationals in Greece.

Highly important, however, is the provision of Section 2 of Article IX of the Treaty, which says that where the alienage of a national of a party to the Treaty has prevented a Greek or an American from receiving national treatment with respect to the right to acquire property by succession, he:

> "* * * shall be permitted freely to dispose of property within the territories of the other party * * * and they shall be permitted a term of at least five years in which to effect such disposition."

Appellant concedes that should he wish to acquire a fee simple title to the property and hold it indefinitely, he would have to prove that Greek law grants reciprocity. The burden of proof as to the existence of Greek law granting reciprocal rights would be upon Appellant and whether he fulfilled his burden of proof would be a question of fact.

To acquire the limited right granted by Section 2 of Article IX of the Treaty, however, no reciprocal rights need be proved. Indeed, it is for the reason that recipro-

cal rights often cannot be proved that the power of sale provision of Section 2 of Article IX was inserted in the Greek Treaty and similar provisions inserted in most other treaties of "Friendship, Commerce and Navigation." As Professor Willard L. Boyd has set out in his recent article in 51 Georgetown Law Review, supra, at page 473 thereof, eleven states have adopted reciprocal succession statutes, many of which are identical to Iowa's Section 567.8. In addition, power of sale provisions are frequently inserted in treaties. See "Property Rights of Aliens under Iowa and Federal Laws," 47 Iowa Law Review 104, footnote 82 on page 117. Power of sale provisions inserted in treaties must be considered as a device to avoid the necessity of proving the existence of reciprocal rights and still allowing the states to have some control over who holds property within their borders. As stated by Professor Willard L. Boyd in "Treaties Governing the Succession to Real Property by Aliens," 51 Michigan Law Review 1001 at page 1016:

> "The alien is allowed a specified period of time in which to liquidate the realty and remove the proceeds without restraint or interference from the country in which it was situated. By this method the states are left to determine their own policies concerning the holding of realty by aliens and at the same time the alien is allowed the market value of the property and forfeiture is avoided."

The Appellant asserts that he could concede that no reciprocal rights of succession exist between the United States and Greece, and still be entitled to judgment under his Petition, although the interest in real estate would terminate if not sold within five years. This is so because

it is Appellant's *alienage* which under Section 567.8 requires him to prove the existence of the reciprocal rights. Section 2 of Article IX of the Treaty says that where a party's *alienage* prevents him from receiving national treatment in *acquiring* property by succession, he shall have five years to dispose of the property. His alienage would prevent him under the restrictions of Iowa law from acquiring property. Therefore, pursuant to Section 2 of Article IX of the Treaty, he shall have five years to sell the property.

Granted a state can impose such restrictions as it will on the right of succession regardless of what the Treaty says, as long as it applies to aliens and nationals alike. Where the restrictions are placed on succession by reason of *alienage,* Section 2 of Article IX comes into play and gives the alien the limited property right regardless of state law because of the supremacy of federal treaties over state law.

This is precisely the holding of the United States Supreme Court in *Clark v. Allen,* supra, involving the interpretation of the effect of a German treaty on the California succession statute, which was nearly identical to Iowa Section 567.8. In that case the Court did find that the reciprocal succession statute was constitutional and did not invade the federal treaty power. The Court did go on to find, however, that the requirement of the California statute necessitating proof of reciprocal rights of succession was nullified by the treaty between the United States and Germany and there was no necessity for proving the existence of reciprocal rights. The Ger-

man treaty gave a three year power of sale where the alien was disqualified from taking by the laws of the country wherein the property was located. The Court stated:

> "The rights secured are in terms a right to sell within a specified time, plus a right to withdraw the proceeds and an exemption from discriminatory taxation * * * and though they are not expressed in terms of ownership or the right to inherit, that is their import and meaning * * * (Citing cases including *Ahrens v. Ahrens,* 144 Iowa 486, 489, 123 N. W. 164, 166). * * *
>
> "If, therefore, the provisions of the treaty have not been superseded or abrogated, they prevail over any requirements of California law which conflicts with them."

This Court found, therefore, the requirement of proving reciprocal succession rights to conflict with the treaty, and no proof of reciprocity was necessary. To the same effect see *Kolovrat v. Oregon,* 366 U. S. 187, decided in 1961.

The identical proposition that was decided in the case of *Clark v. Allen* is presented in the case at bar. The *Clark v. Allen* case can lead to no other conclusion than that the Appellant here need not prove the existence of reciprocal rights of succession to give him a valid claim to the estate of his adopting father as set out in Section 2 of Article IX of the treaty providing he dispose of his real property within five years.

It is difficult to understand the interpretation placed upon the Treaty provisions by the majority of the Iowa Court and urged by the Appellee. It apparently is based

upon two false conclusions. The first is that somehow the Treaty itself requires proof of reciprocal rights of succession (R. 48-49). As shown at page 42 of the Record, the majority of the Iowa Supreme Court state:

> "In the first place the provision of the Treaty which requires reciprocal rights as between nationals of the two contracting countries supersedes any other and later provisions."

The writer of the opinion then goes on to claim that Article XXIV, Section 1 of the Treaty, set out in full in Appendix B, *infra*, nullifies the provisions of Article IX, Section 2. Article XXIV of the Treaty is merely the article which sets out the definition of terms used in the Treaty. Section 1 thereof defines the term "national treatment." "National treatment" is said to mean, in effect, that a citizen of Greece must be treated no less favorably in the United States than United States nationals are treated therein. The Iowa Court emphasizes that the article states:

> "The term does not imply immunity from the laws and regulations * * * of both parties."

It is significant that in so quoting the last line of the definition of "national treatment" the opinion writer omitted the words "which apply in a nondiscriminatory manner." National treatment means, then, that the United States and the states can impose restrictions on the manner in which property may be acquired by succession, for example, providing that the restrictions do not discriminate against Greek citizens. Article XXIV, Section 1 of the Treaty, simply states that "national treatment" shall not be taken to imply immunity from laws and regulations

of a party to the treaty "which apply in a nondiscriminatory manner to nationals of both parties."

It is obvious that the section of the Treaty defining "national treatment" does not "supersede" Article IX, Section 2 of the Treaty as the majority argues (R. 48). Substituting the definition of "national treatment" for the words "national treatment" contained in Section 2 of Article IX of the Treaty would mean that the section would simply say, in effect:

> "Greeks shall be permitted to dispose of property in the United States with respect to the acquisition of which their alienage has prevented Greeks from being treated like United States citizens, and they shall be given five years to do so."

It is difficult to understand how the addition of the definition of "national treatment" to Section 2, Article IX of the Treaty can be said to nullify or supersede its provisions. Nor can Article XXIV be said to allow the enforcement of reciprocal right of succession statutes by various states of the United States. That article simply says that national treatment means that where the term is applicable Greeks must be treated like United States citizens in the United States. Section 2 of Article IX simply says that where *alienage* prevents a Greek or United States citizen from being treated like a national in acquiring property, they shall have five years to sell it. Certainly, then, it is not either one of these sections of the Treaty that require proof of reciprocal succession rights.

It is Section 567.8 of the Iowa Code which imposes the requirement on Greeks and other nonresident aliens

to prove the existence of reciprocal succession rights. As previously discussed, it is *alienage* which requires proof of reciprocal succession rights under the Iowa statute in question. Since the Greek's alienage prevents him from acquiring property in Iowa in the same manner as a United States national, i.e., from receiving "national treatment," he should have five years to sell the property pursuant to Section 2, Article IX. Far from requiring proof of reciprocal rights of succession then, the Treaty sections provide that where one of the parties to the Treaty establish some discriminatory requirement in the manner that citizens of the other party may acquire property, such as the Iowa statute, the alien citizen has five years to sell the property.

The second false conclusion of the majority of the Iowa Court is that Appellant cannot dispose of property under Section 2 of Article IX of the Treaty until he acquires it. The majority stated in the opinion (R. 48):

> "Appellant emphasizes disposal of property. He ignores the fact that before the ward can own and dispose of the property he must acquire it according to: 1. Law of Iowa. 2. Reciprocal provision of treaty. 3. By carrying the burden of proof to all facts."

There can be no quarrel with the proposition that before one can sell property, he must acquire it. However, as previously discussed, where a nonresident alien is prevented from acquiring a fee simple interest in property by reason of reciprocal succession statutes such as Iowa's Section 567.8, Article IX, Section 2 of the Treaty gives the alien a five year power of sale. The majority is cor-

rect when it finds that Appellant cannot acquire a complete fee simple interest to the real estate in question without proof of reciprocal succession rights, but incorrect when it finds that without proof of reciprocal succession rights, no property rights are given by the Treaty. Courts have frequently held that the grant of a power of sale such as given in Article IX, Section 2 of the Treaty does constitute a property right.

The Iowa Supreme Court in the case of *Doehrel v. Hillmer*, 102 Iowa 169, 71 N. W. 204 (1897), had occasion to examine this problem. There a treaty between the United States and Prussia provided that on the death of any person holding real estate within the territory of one party, if such real estate would by the law of the land descend to the subject of the other, were he not disqualified by alienage, such citizen shall be allowed a reasonable time to sell same and withdraw the proceeds. The Iowa Court found that the power of sale provided for in that treaty was more than that. An actual fee was given the alien. The Court stated:

> "Her estate in the land was that defined by Plowden as a fee simple determinable, or by Blackstone as a base or qualified fee. * * * By the terms of the treaty, the power to dispose of the land and appropriate its proceeds is granted in positive terms. Such a power to sell cannot be exercised unless the power is vested with the fee, or, in other words, the complete ownership * * *
>
> "The evident purpose was to so protect the citizens and subjects of both countries in their property interest that alienage would not effect the right of inheritance."

The Iowa Court considered a similar question in the case of *Ahrens v. Ahrens*, 144 Iowa 486, 123 N. W. 164 (1909). This case involved a treaty between the United States and Hanover, which contained the following provision:

> "Where, on the decease of any person holding real estate within the territories of one party, such real estate would by the laws of the land descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same and to withdraw the proceeds without molestation * * *"

Under the statutes in force at the time of the *Aherns* case, a nonresident alien could not inherit title to real estate in Iowa. The Iowa Court stated:

> "The effect of the treaty was not to nullify the statute, but to suspend it in its application to a citizen of Hanover. * * * The argument at this point is that by virtue of this treaty the nonresident alienage did not disqualify them to take title to real estate. It only disqualified them to hold such title beyond a reasonable time."

The Court further considered the nature of the interest which the treaty gave to the nonresident alien.

> "Some authorities denominate a base or qualified fee, and others a determinable fee. The terminology is not of controlling importance. *That the right to sell carried with it the ownership as a necessary incident to the power of sale is held by all of the authorities.*" (Emphasis ours).

Thus again the majority of the Iowa Court was incorrect, this time in holding that Appellant acquired no property rights under the treaty unless he proved recipro-

cal succession rights. It is clear that the power of sale given him by the treaty in the event of his inability to prove reciprocal succession rights constituted property which he acquired under the treaty, independent of Iowa law.

The confusion of the majority in arriving at its conclusion is best illustrated by the following statement taken from the Opinion (R. 48):

> "The laws of the State of Iowa are not in conflict with the treaty as a matter of law, in connection with the case at bar. It is a question of fact."

It would appear that in stating whether state statutes are in conflict with federal treaties is a question of fact, the majority of the Iowa Supreme Court has enunciated a new and radical principle of constitutional law.

The opinion of the majority is obviously in error from another standpoint. If Greek claimants must prove the existence of reciprocal rights to property in Iowa and the ten other states having similar reciprocal succession statutes, and take nothing if they cannot, what right does the treaty give them? If, as the majority says, that before there can be disposal of property under Section 2, Article IX, there must be the complete fee simple interest given by proof of reciprocal rights, Section 2 is completely meaningless and grants no rights at all.

It should also be noted that Section 2 of Article IX is not a one-way street for the benefit of Greeks only. United States citizens have occasion to use the power of sale provision of Section 2. Section 1 (b) of Article IX provides that the right of U. S. citizens to acquire prop-

erty in frontier and coastal areas of Greece shall be subject to the restrictions Greece may impose on aliens to acquire property in those areas. If Greece does in fact create restrictions on aliens, the U. S. citizen claiming property in those areas would have the right to dispose of the property within five years pursuant to Section 2. This would be so because the *alienage* of the U. S. citizen prevented him from receiving "national treatment" in Greece.

The interpretation placed on the Treaty by Appellant and the minority of the Iowa Supreme Court is in accord with the intent of the parties to the treaty, the governments of Greece and the United States. By Order of this Court dated October 12, 1964, the Solicitor General was invited to express the views of the United States with respect to this case. In December 1964, the Solicitor filed with this Court a Memorandum for the United States. Therein, three separate lawyers acting as counsel for the United States State Department expressed the view that the Iowa Supreme Court was in error. This view was best expressed by the Memorandum of Andreas F. Lowenfeld, Acting Legal Advisor for the Secretary of State, dated October 26, 1964, found as Appendix B to the Memorandum for the United States filed in this cause. Mr. Lowenfeld stated in part:

> "It is the view of the Department of State that the intent of Article IX (1) of the Treaty * * * is to accord national treatment to Greek citizens in respect to the acquisition of real property through inheritance, subject to local laws which may limit the rights of aliens to *hold* real property. Article IX (2) sets a limitation upon this exception for state

laws prohibiting alien ownership of realty by requiring that the alien be allowed five years in which to dispose of real property he has acquired through inheritance. The Department of State is of the opinion that the treaty eliminates any necessity of proving reciprocity of treatment where the property in question is realty and thus subject to Article IX."

Based up the three opinions, the Solicitor General concludes at page 3 of his Memorandum:

"The Iowa Courts have held that State laws of inheritance may be applied so as to defeat the right of a nonresident Greek national to take by succession real and personal property located within the State. This holding depends on a construction of a treaty between the United States and Greece. That construction, in the view of both the Department of State and the Greek Government, is in error."

As discussed in Division I of the Argument portion of this Brief, treaties must be liberally construed to give effect to rights granted therein and the interpretation placed on the treaty provisions by the State Department is given great weight by the Court. See *Kolovrat v. Oregon*, supra. It is obvious that the interpretation placed upon the Treaty by the governments involved and a plain reading of the Treaty dictate a reversal of this cause.

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of the State of Iowa affirming the Judgment and Decree of the District Court of Iowa in and

for Woodbury County, sustaining the validity of Section 567.1 and Section 567.8, Code of Iowa, 1958, should be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Respectfully submitted,

GEORGE S. POBIKOS

221 North LaSalle Street
Chicago, Illinois

Of Counsel

ROBERT R. EIDSMOE

611-621 Security Building
Sioux City, Iowa 51101

Counsel for Appellant.

APPENDIX A

Section 567.1, Code of Iowa, 1958.
Section 567.8, Code of Iowa, 1958.

"567.1 ACQUISITION OF REAL ESTATE. Nonresident aliens, or corporations incorporated under the laws of any foreign country, or corporations organized in this country one-half of the stock of which is owned or controlled by nonresident aliens, are prohibited from acquiring title to or holding any real estate in this state, except as hereinafter provided.

"The widow and heirs and devisees, being nonresident aliens, of any alien or naturalized citizen who has acquired real estate in this state, may hold the same by devise, descent, or distribution, for a period of twenty years; and if at the end of that time such real estate has not been sold to a bona fide purchaser for value, or such alien heirs have not become residents of this state, such land shall escheat to the state.

"Nothing in this section contained shall prevent aliens from having or acquiring property of any kind within the corporate limits of any city or town in the state, or lands not to exceed three hundred and twenty acres in the name of one person, or any stock in any corporation for pecuniary profit, or from alienating or devising the same.

"This chapter shall not affect the distribution of personal property, and shall apply to real estate heretofore devised or descended when no proceedings for forfeiture have been commenced."

"567.8 ALIENS' INHERITANCES. 1. The right of aliens not residing within the United States or its territories to take real property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens

of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents and the right of aliens not residing in the United States or its territories to take personal property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents.

"2. The burden shall be upon such nonresident aliens to establish the fact of existence of the reciprocal right set forth in subsection 1.

"3. If such reciprocal rights are not found to exist and if no heirs other than such aliens are found eligible to take such property, the property shall be disposed of as escheated property."

APPENDIX B

Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece.

The United States of America and the Kingdom of Greece, desirous of strengthening the bonds of peace and friendship traditionally existing between them and of promoting their economic development and the general welfare of their peoples, and being cognizant of the contributions which may be made toward these ends by arrangements which facilitate and encourage, on bases mutually advantageous, the flow of investment capital and

of technology and the further development of productive enterprise and commercial intercourse, have resolved to conclude a Treaty of Friendship, Commerce and Navigation, based in general upon the principles of national and of unconditional most-favored-nation treatment reciprocally accorded, and for that purpose have appointed as their Plenipotentiaries,

The President of the United States of America:

The Honorable John E. Peurifoy, Ambassador Extraordinary and Plenipotentiary of the United States of America to Greece,

and

His Majesty the King of the Helfenes:

His Excellency Sophocles Venizelos, Prime Minister and Minister of Foreign Affairs,

who having communicated to each other their full powers found in good and due form, have agreed upon the following articles:

Article VIII.

Neither Party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other Party in the enterprises which they have established or in the capital, skills, art or technology which they have supplied; nor shall either Party unreasonably impede nationals and companies of the other Party from obtaining on equitable terms the capital, skills, arts and technology needed for economic development.

Article IX.

1. Nationals and companies of either Party shall be accorded, within the territories of the other Party, national treatment with respect to acquiring by purchase or otherwise and with respect to owning, leasing, occupying and using land, buildings and other immovable property appropriate to the conduct of commercial, manufacturing, processing, financial, construction, publishing, scientific, educational, philanthropic and professional activities, and for residential and mortuary purposes, subject to the following limitations:

(a) in the case of nationals and companies of Greece the acquisition by purchase, or otherwise, of ownership rights in land, buildings, and other immovable property, within the territories of the United States, shall be dependent upon the applicable laws of the States, Territories and possessions of the United States of America within which such property is located; and

(b) in the case of nationals and companies of the United States of America the right to acquire by purchase, or otherwise, and the right to lease, occupy and use land, buildings, and other immovable property, within the territories of Greece, shall be subject to restrictions which Greece may consider it necessary to impose on the right of aliens to acquire by purchase, or otherwise, and to lease, occupy and use such property in specific frontier and coastal areas.

2. Nationals and companies of either Party shall be permitted freely to dispose of property within the territories of the other Party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treat-

ment, and they shall be permitted a term of at least five years in which to effect such disposition.

3. Nationals and companies of either Party shall be accorded within the territories of the other Party national treatment with respect to disposing of property of all kinds.

Article XXIV.

1. The term "national treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party. The term does not imply immunity from the laws and regulations of a Party which apply in a non-discriminatory manner to nationals, companies, products, vessels, or other objects, as the case may be, of both Parties.

2. The term "most-favored-nation treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of any third country.